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Attorneys for Defendant
INTEGRITY INVESTMENT GROUP, LLC

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

KEVIN R. MCLEAN,

Plaintiff,

v.

WORLD SAVINGS FSB; INTEGRITY
INVESTMENT GROUP, LLC; GOLDEN
WEST SAVINGS ASSOCIATION
SERVICE CO.; SUSAN FEDERIGHI; BILL
FORD; JEFFREY FORD; CALIFORNIA
FRANCHISE TAX BOARD; WILLIAM L.
VEEN,

Defendants.____

No. 07-05594 JSW

**REPLY MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT OF MOTION TO
DISMISS [RULES 12 (b)(1) and
12(b)(6)]**

Date: March 28, 2008

Time: 9:00 a.m.

**Courtroom: Hon. Jeffrey S. White,
Courtroom 2, 17th Floor**

1. Introduction and Summary of Arguments

This case is set for hearings on motions to dismiss by all defendants on March 28, 2008. In addition, this defendant has an additional motion to expunge a Notice of Pending Action recorded by Plaintiff against defendant's property in this case. In the related case, Integrity Investments, LLC v. McLean, No. 07-6621, there is a pending and submitted motion to remand that action to state court.

1 Defendant filed combined opposition to all of the defense motions to dismiss which was
 2 also apparently intended to be his opposition to the Motion to Expunge. Defendant raises no
 3 serious arguments or proof regarding the jurisdictional questions raised by the defense motions,
 4 nor does he substantively address any of the issues raised on the merits of the case in the
 5 expungement motion or this defendant's motion to dismiss. The motions should all be granted.

6 **2. Dismissal for Lack of Subject Matter Jurisdiction.**

7 In this case, the basis for federal question jurisdiction against this defendant is allegedly the
 8 notice to quit and unlawful detainer complaint which plaintiff challenges as a "Wrongful
 9 Eviction." (FAC, ¶¶ 32-36 and Exhibits E and F). Defendant alleges that the federal question arises
 10 as a civil rights violation under 42 U.S.C. 1983 (FAC ¶ 10), but the First Amended Complaint
 11 states only four purely state-law based claims.

12 The opposition fails to address this question at all. Instead, plaintiff directed the court to
 13 a federal bankruptcy court case construing Arizona law on non-judicial foreclosures. (In re Acosta
 14 181 BR 477 (Bankr. D. Ariz. 1995)). In Acosta, on the facts of that case, the court ruled that a
 15 borrower was entitled to actual notice of a non-judicial sale. He claims that this case controls to
 16 invalidate the sale in this case, and that he was entitled to actual notice of the foreclosure sale in
 17 California.

18 Apart from the fact that the instant case still presents solely state law issues, Acosta is not
 19 good law in this case. First, it is a federal bankruptcy court opinion construing Arizona law. The
 20 fact that it was rendered by a federal court does not make it applicable in this case, nor does it
 21 create a federal question.

22 Second, the federal courts in the Ninth Circuit have declined to follow Acosta in cases
 23 arising under California law, for the simple reason that it does not apply or state what the law of
 24 foreclosures is in California. In In re Nghiem 264 B.R. 557, 561-564 (9th Cir. BAP 2001), the Ninth
 25 Circuit Bankruptcy Appellate Panel, in a case from this district, rejected a California debtor's
 26 attempt to use Acosta for the same proposition as plaintiff offers it here. As set forth in the cases
 27 in this defendant's moving papers, there is a wealth of California authority contradicting plaintiff's
 28

1 theory of liability based on lack of actual notice.

2 Third, even if Acosta had some relevance to this case as it applied to the lenders or
3 foreclosure trustee, such notice issues do not apply to this defendant, who had no lending or other
4 relationship with the plaintiff, but is a third party buyer at the sale. As noted in the moving papers,
5 the California courts have made it very clear that a third party purchaser at a sale is a bona fide
6 purchaser. By statute, this presumption of a regular sale recited in a recorded Deed of Trust Upon
7 Sale is **conclusive** in favor of a bona fide purchaser. (Civil Code Section 2924). (See also authorities
8 cited on this point in the moving papers). This defendant is entitled to a conclusive presumption
9 that the sale was regular, so it is entirely irrelevant what plaintiff says about misconduct in the
10 foreclosure against any of the other parties.

11 **3. Conclusion.**

12 Since defendant purchased the property, it has been deprived of its use for over 4 months
13 on the basis of non-existent claims and pretexts. The opposition only highlights how spurious are
14 the claims in this action and the related case. For the foregoing reasons, the court should grant
15 the motion, and dismiss this case as against Integrity Investment Group, LLC and expunge the
16 Notice of Pending Action.

17 Dated: February 28, 2008

LAW OFFICES OF MARK J. ROMEO

18 By /S/Mark J. Romeo

MARK J. ROMEO

19 Attorneys for Plaintiff

PROOF OF SERVICE

I am employed in the City and County of San Francisco, California. I am over the age of 18 years and not a party to the within action; my business address is 130 Sutter Street, 7th Floor, San Francisco, CA 94104.

On February 28, 2008, I served the foregoing document(s) on the interested party(ies) in this action by placing a true copy XX the original of said document(s) in a sealed envelope(s) addressed as stated below and

BY MAIL

 I deposited such envelope(s) in the mail at San Francisco,

I am "readily familiar" with the office's practice of collection and processing correspondence for mailing. Under that practice, the mail would be deposited with the U.S. postal service on that same day with postage thereon fully prepaid at San Francisco, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

BY PERSONAL SERVICE

 Personally hand delivered said document(s) to addressee

 I caused said document(s) to be served via personal service

BY OVERNIGHT MESSENGER

 I caused said document(s) to be served by for next-day delivery, by agreement with tenants

BY FACSIMILE

 And I faxed such document(s) to telephone number. A transaction report confirming a successful transmission was obtained.

BY certified or registered mail

 I deposited such envelope(s) in the mail at San Francisco, California with the U.S. postal service on that same day with postage thereon fully prepaid, certified mail, return receipt requested.

PARTY(IES) SERVED:**Plaintiff**

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Defendants World Savings, Golden West Savings Association Service Company

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Defendants Bill Ford, Jeffrey Ford, Susan Federighi

BILL FORD

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Pacifica, CA 94044

DOCUMENT(S) SERVED:**Reply Memo P&A**

 I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on February 28, 2008 at San Francisco, California.

Mark J. Romeo

/s/ Mark J. Romeo

Type or Print Name

Signature